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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Dallas

Date: JAN 29 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of
the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

IN BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Signature]
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 1, 1960, in Mexico. The applicant's father, [REDACTED] hereafter referred to as [REDACTED] was born in March 1917 in either Mexico or the United States, the location is in dispute. [REDACTED] died on January 15, 1999. The applicant's mother [REDACTED] was born in 1927 in Mexico and never had a claim to U.S. citizenship. The applicant's parents married each other on December 9, 1944. The applicant claims that he acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

In a sworn statement dated August 24, 1947, [REDACTED] stated that he was born on March 31, 1917, in San Juan, Chihuahua, Mexico, and that he was a citizen of Mexico. [REDACTED] presented a Baptismal Certificate from the Church of Santa Teresa de Jesus in Presidio, Texas, indicating that he was born in Mexico. In the statement [REDACTED] also indicated that because he had two witnesses swear that he was born in the United States, he was able to obtain a United States birth certificate. He was issued a Delayed Texas birth certificate on December 9, 1946. That certificate was determined to be fraudulent and the Service notified the Texas State Registrar's Office of this fact on October 15, 1965.

The applicant became the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen wife, and he was lawfully admitted for permanent residence on February 22, 1979.

The district director determined that the record failed to establish that the applicant's father was a United States citizen by a preponderance of the evidence and denied the application accordingly.

On appeal, counsel submits a Non-Existence of Birth Certificate record reflecting that no individual named [REDACTED] was born in Ojinaga, Mexico, between the years 1914 and 2001. Counsel also submits a sworn statement by Benedicto, dated September 20, 1993, reflecting that he was born on the Spencer Ranch in Presidio County, Texas.

On appeal, counsel notes that after the Presidio County District Clerk cancelled [REDACTED] Texas Delayed Certificate of birth on November 18, 1965, pursuant to an order by the Service, seven of his children immigrated as a result of his U.S. citizenship. The Texas Department of Health informed the El Paso Intelligence Center on August 4, 1981 that their office had received several applications for a certified copy of that birth certificate. On September 8, 1976, April 26, 1978, June 11, August 4, and December 21, 1981, and February 3, 1982, the Texas Department of Health informed the El Paso Intelligence Center that the applicant for copies of the birth certificate was [REDACTED]

[REDACTED] and, though they had a copy of the sworn statement by [REDACTED] that he was born in Mexico, they would issue the certificates, under present policy, after a delay of 10 working days.

The record contains an English translation of a Baptismal Certificate issued by the Church of Santa Teresa de Jesus in Presidio, Texas, stating that [REDACTED] was born in San Juan, Ojinaga, Mexico, on March 31, 1917, and was baptized on August 15, 1917.

On appeal, counsel states that the Service should be estopped from denying the applicant the benefit sought, based on the allegation that [REDACTED] was not a United States citizen, when the Service itself has previously acknowledged the same, and conferred benefits pursuant thereto.

In Matter of Morales, 15 I&N Dec. 411 (BIA 1975), the Board of Immigration Appeals stated that here have been several court cases indicating that, under certain circumstances, the doctrine of equitable estoppel is applicable to the Federal government. However, it knows of no Supreme Court decision specifically endorsing this view. In INS v. Hibi, 414 U.S. 5 (1973), the Supreme Court indicated that, if applicable at all, estoppel could only arise after "affirmative misconduct" on the part of the government. See Matter of Hernandez-Puente, 20 I&N Dec. 335, 338 (BIA 1991).

The actions taken in this matter were based on documented evidence and statements by the parties involved and conclusions were made based on that evidence. The Associate Commissioner finds no evidence of affirmative misconduct to support counsel's equitable estoppel argument.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

In Matter of E-M-, 20 I&N Dec. 77 (BIA 1989), the Board of Immigration Appeals (BIA) held that, generally, when something is to be established by a preponderance of evidence, it is sufficient that the proof only establish that it is probably true.

The record contains a statement by [REDACTED] given under oath to a Service Officer on August 24, 1947, stating that he was born in

Mexico. The record also contains an affidavit dated September 20, 1993, given to a Notary Public, stating that he was born in the United States. These documents contradict each other.

The record contains a Non-Existence of Birth Certificate indicating no record of the birth of [REDACTED] in Ojinaga, Mexico, and the Baptismal Certificate reflecting that [REDACTED] was born in Ojinaga, Mexico and baptized on August 15, 1917, in the United States. There is also the delayed birth certificate indicating that he was born in the United States. These documents also contradict each other.

These contradictory statements and documents make it impossible to establish by a preponderance of the evidence that [REDACTED] was born in the United States.

The record reflects that seven of [REDACTED] children immigrated as a result of his U.S. citizenship. The Texas Department of Health indicated that on several occasions, though it had been notified of [REDACTED] claim to being born in Mexico, copies of his delayed birth certificate were issued "under present policy." The Service has no control over the policies and procedures of the Texas Department of Health.

The applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father was born in the United States by a preponderance of the evidence. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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